

**Application No. 10/020,922**  
**Art Unit 1772**  
**February 27, 2004**  
**Reply to Office Action of December 1, 2003**

**REMARKS**

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims.

In the present application, claims 1-20 are pending. Claims 1, 3-8 and 10-20 have been amended. No new matter has been added by way of these amendments since the amendments are editorial in nature and fully supported by the present specification. For example, the amendment to claim 1 has support in the present specification at page 15, line 3. With the amendment to claim 1, claim 3 was appropriately amended. The amendments to claims 4, 8, 12, 13, 17 and 20 are supported at page 2, lines 18-19, page 15, lines 1-3 and page 23, lines 15-25 of the present specification. The amendment to claim 4 is further supported at page 20, lines 17-19 of the specification. The other amendments to the various claims are editorial in nature and for purposes of clarification. Thus, no new matter has been added.

No new matter has been added with the amendments to the present specification as well. These changes are also for clarification purposes.

Based upon the above considerations, entry of the present amendment is respectfully requested.

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In view of the following remarks, Applicants respectfully request that the Examiner withdraw all objections and rejections and allow the currently pending claims.

### ***Objections to the Specification***

The present specification has been objected to for the reasons stated in paragraphs 7 and 16 of the Office Action. Applicants respectfully traverse.

Applicants respectfully refer the Examiner to the amended specification. The specification as amended addresses the Examiner's concerns and no new matter has been added. Thus, Applicants respectfully request withdrawal of these objections.

### ***Claim Objections***

Claim 2 stands objected to for the reasons stated in paragraph 8 of the Office Action (this objection is also related to paragraph 22). Also, claim 9 stands objected to for the reasons stated in paragraph 17 (page 7) of the Office Action. Applicants respectfully traverse.

The Office Action states that the objection of claim 2 would be withdrawn if claim 1 requires the component copolymer (B). Claim 1 requires component (B), rendering this objection moot.

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Further, claim 2 properly depends on claim 1. Claim 1 recites several ingredients, wherein claim 2 is an embodiment directed to one of the ingredients (the ethylene/ $\alpha$ -olefin copolymer (B)). The relation between claims 1 and 2 is analogous to reciting a Markush group of component (B) and a combination of components (B) + (C) (in claim 1), and claim 2 is directed to one of the components recited in the Markush group (component (B)) of claim 1. Thus, Applicants respectfully submit that claim 2 properly depends on claim 1. Withdrawal of this objection is respectfully requested.

Applicants also respectfully request consideration of the embodiment of claim 2 (see paragraph 22 of the Office Action).

With regard to claim 9, Applicants again submit that this claim does limit claim 1 for the reasons relating to claim 2 above. Accordingly, withdrawal of this objection is respectfully requested.

**Issues Under 35 U.S.C. 112, First Paragraph**

Claims 8, 12, 17 and 20 stands rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in paragraphs 11 and 18 of the Office Action. These rejections are respectfully traversed, and reconsideration and withdrawal thereof are requested.

With regard to paragraphs 11 and 18 of the Office Action and claims 8, 12, 17 and 20 of this application, Applicants respectfully refer the Examiner to page 20, lines 17-19, page 18, lines 17-25 and

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page 7, lines 2-4 of the present specification. These parts of the present specification clearly and adequately describe the structural details of the embodiment of claim 8. Applicants submit that the disputed claims fully comply with the provisions of 35 U.S.C. § 112, first paragraph.

Still, the Office Action in paragraph 11 refers to the "three-layered cup" and page 20 of the present specification as to how the structure of the disputed claims cannot be determined. In response, Applicants respectfully submit that "three-way sealing" is disclosed, and not a three-layered cup. Further, the three-way sealing at page 20 of the present specification refers to a film or sheet molding, and is not with regard to cup molding. These are different embodiments discussed in the present specification, and thus there is no inconsistency between the present specification and the claims (versus what is asserted at the end of paragraph 11 of this Office Action). Here, one of skill in the art would understand what is instantly claimed with the embodiments of claims 8, 12, 17 and 20, and realize the present Applicants had possession of this invention at the time of filing this application.

Further, the mentioned three-way sealing is described at page 13, lines 12+ of the specification. Here, the sealant laminate and the polypropylene film or sheet is sealed with three sides (sealed by heat).

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Thus, based on the above, Applicants respectfully request the Examiner to reconsider and withdraw this rejection. If more clarification is needed, Applicants respectfully request the Examiner to contact Applicants' representative (the contact information is at the end of this reply).

**Issues Under 35 U.S.C. 112, Second Paragraph**

Claims 4-8 and 10-20 stand rejected under 35 U.S.C. § 112, second paragraph, for the reasons set forth in paragraphs 12 and 19 of the Office Action. Applicants respectfully traverse, and reconsideration and withdrawal of these rejections are respectfully requested.

Applicants respectfully refer the Examiner to the presented claims, wherein the disputed term is not recited. Thus, this rejection is rendered moot, and withdrawal of this rejection is respectfully requested.

Reference is also made to the paragraphs bridging pages 5-6 of the Office Action of March 28, 2003, and how Applicants have not addressed the Examiner's concerns. To address these concerns, and to address those concerns in the paragraph bridging pages 7-8 of the current Office Action (in paragraph 19), Applicants herein attach Figure 1. With regard to this drawing, the sealant layer (I) and the base layer (III) form a "sealant laminate". Further, as seen in

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submitted Figure 1, the present invention of a sealed package is formed by heat-sealing the mentioned "sealant laminate" and the resin layer of polypropylene (II) (shown as a polypropylene cup). Accordingly, Applicants respectfully request consideration of the structural details of Figure 1 in light of the interpretation of the disputed claims.

With regard to page 8, lines 4-5 of the current Office Action, Applicants respectfully refer the Examiner to claims 10 and 18 as amended ("a cup" is recited).

Applicants further submit that embodiments having hermetic seals are still within the scope of the present invention. Applicants agree that "hermetically" can be a relative term, but such a term is well understood by the skilled artisan.

Again, if more clarification is needed or if there are still some concerns, Applicants respectfully request the Examiner to contact Applicants' representative at the contact information given below.

**Issues Under 35 U.S.C. 102(b)/103(a)**

Claims 1, 3, 4 and 7 stand rejected under 35 U.S.C. § 102(b) over the Yamamoto et al. '861 reference (U.S. Patent No. 5,741,861) for the reasons set forth in paragraph 13, page 5 of the Office Action. Also, claims 5, 6, 10, 11, 13-16, 18 and 19 stand rejected

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under 35 U.S.C. § 103(a) over Yamamoto '861 for the reasons set forth in paragraphs 14 and 20 of the Office Action. Finally, claims 8, 12, 17 and 20 stand rejected under 35 U.S.C. § 103(a) over Yamamoto '861 in view of Yamada '453 (U.S. Patent 5,281,453) for the reasons set forth in paragraphs 15 and 21 of the Office Action. These rejections are respectfully traversed, and reconsideration and withdrawal of these rejections are respectfully requested.

Claims 1, 4, 8, 12 and 17 as presented require the ethylene/ $\alpha$ -olefin copolymer (B) in the composition of the sealant. The other disputed claims depend on these independent claims. These amendments clearly distinguish the present invention from Yamamoto '861 by removing the case where the content of (B) is 50%. Thus, all of these rejections have been overcome. Also, Applicants submit that other patentable distinctions for the present invention over Yamamoto '861 exist.

Yamamoto '861 discloses a resin composition for laminate, wherein the resin composition may be used as a sealant for a sandwich laminate having a base and a sealant, and the base may be various types of materials. However, Yamamoto '861 fails to disclose all features of the instantly pending claims. For instance, there is no disclosure in the cited reference on controlling any sealing strength that would be dependent on the base material type. Further, polypropylene is not used as a base material in the Examples of

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Yamamoto '861. In other words, Yamamoto '861 fails to disclose or recognize a (hermetically) sealed package that can be opened by peeling. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," the cited Yamamoto '861 reference cannot be a basis for a rejection under § 102(b). See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Thus, because of the lack of disclosure of all features as instantly claimed, the rejection in view of Yamamoto '861 is overcome.

Further, a *prima facie* case of obviousness requires disclosure of all claimed features. See *In re Vaeck*, 947 F.2d, 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); see also *In re Kotzab*, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). Thus, Applicants respectfully submit that all rejections under § 103(a) have been overcome as well since Yamamoto '861 fails to disclose all claimed features as instantly recited, and Yamada '453 does not account for such deficiencies. Applicants also submit that the other requirements for a *prima facie* case of obviousness have not been satisfied, since Yamamoto '861 and Yamada '453 fail to recognize that the claimed features of the present invention would lead to advantages such as improved peeling strength.

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Overall, Applicants respectfully submit that the present invention is patentably distinct over the cited Yamamoto '861 and Yamada '453 reference. Accordingly, reconsideration and withdrawal are respectfully requested.

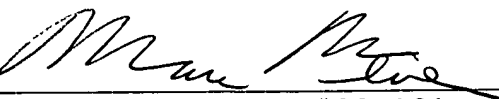
### **Conclusion**

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
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MSW/ETP/las  
1155-0236P  
Attachment:

Figure 1

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